IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 423 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SURAT MUNICIPAL CORPORATION - Petitioner(s)
Versus
AMINESH CHANDRAVADAN BODIWALA - Respondent(s)

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Appearance :
MR KD PANDYA FOR MR PRASHANT G DESAI for Petitioner,
MR AK CLERK for Respondent,

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 25/07/2007

ORAL JUDGMENT

1. Heard Mr.K.D. Pandya, learned counsel for the petitioner and Mr.A.K. Clerk, learned counsel for the respondent.
2. The petitioner – Surat Municipal Corporation, being aggrieved by the Award dtd.18/5/2000 passed by the

learned Presiding Officer, Labour Court, Surat in Reference (LCS) No.783 of 1997, is before this Court with a submission that the award deserves to be quashed and set aside.

3. Short facts necessary for disposal of the present writ application are that the petitioner was appointed as a trainee w.e.f. 25/3/1994, he continued upto 4/2/1995. It appears that thereafter he was involved in some criminal case, therefore, could not continue with the training or join the office. On 20/4/1995, a notice was issued to show cause as to why he was on unauthorised leave right from 4/2/1995. Yet another memo was issued on 25/5/1995 and the last memo was issued on 29/9/1995. It appears that in accordance with the order of appointment, a person was required to complete the training satisfactorily within a period of one year, but, in case of incomplete training or unsatisfactory training, the Corporation was to extend the period of training for a further period of six months. On 8/11/1995, the Corporation issued the order that as the respondent workman had not completed the training satisfactorily, he was removed from services. Being aggrieved by the said order of termination, the respondent workman filed a

reference which came to be answered in his favour with the direction that the workman be reinstated on his original post , however without back wages, but with benefit of continuity of service. Therefore, the Corporation is now before this Court.

4. Mr.K.D. Pandya, learned counsel for the petitioner Corporation submits that present is not a case where the services have been terminated either because of the involvement of the petitioner in the criminal case or because of his absence. Present was a case where the trainee having not completed the training satisfactorily, was discontinued from the training. He submits that even otherwise, in case of a trainee, there cannot be a regular appointment and reinstatement could only be to the post of the trainee with a further direction that such trainee would be required to complete the training satisfactorily.

5. Mr.A.K. Clerk, learned counsel for the respondent workman, on the other hand, submits that from the list of events annexed with the writ application, it would clearly appear that the respondent workman was terminated from services because of his involvement in the criminal case. He also submitted that if the Corporate veil will is lifted, it would clearly appear that the action was taken

against the respondent workman as he was absent. According to him, the respondent was falsely implicated in the criminal case, therefore, he was unable to attend the training. According to him, on completion of one year of the training, the Corporation never informed the respondent workman that he had not completed the training satisfactorily and that the order extending the training was never served upon him.

6. From a perusal of list of events, it would clearly appear that the case of the petitioner was that the respondent was terminated from services, because, he was involved in some criminal case. It is now undisputed before me that the respondent workman had already been acquitted in the said matter.

7. It would also appear from the records that right from 20/4/1995 to 29/9/1995, the Corporation was issuing notices to the workman to show cause or explain as to why he was on leave. This certainly would show frame of the mind of the authorities of the Corporation.

8. Referring to the order dtd.8/11/1995 (order of termination) it is contended by Mr.Pandya, learned counsel for the petitioner Corporation that vide order No.PHD/EST/828 dtd.23/5/1995, period of training was

extended for six months. However, Mr.Pandya, is unable to make any submission that order extending the period of training was ever served upon the workman and the workman was ever informed of his shortcomings. I will be justified in holding that in a case of a trainee, when it is found that his training was not going on satisfactorily, then, such trainee is required to be informed of his shortcomings and the defects so that he can improve. He is also required to a notice that his period of training has been extended which would work as an eyeopener and would tell the trainee to have an introspection. In the present case, in absence of such a communication to the respondent workman, I am unable to hold that the period of training was extended because first part of the training was not satisfactorily completed.

9. Taking into consideration the totality of the circumstances, I must hold that the court below was justified in setting aside the order of termination, but, at the same time, I must observe that the court below was not justified in giving benefit of continuity of service. It would be apt to observe that in case of a temporary employee, a daily wager or a trainee, reinstatement would be to the post held by employee, there is no

question of continuity of service or any other benefit in his favour. I simply direct that the respondent workman should be reinstated, but, however, without back wages, as he has not earned the same and he would also not entitled to benefit of continuity of service. He would be taken as a trainee and will have to complete the training satisfactorily to get the benefit of permanency.

10.The petition is disposed of with the order aforesaid.

(R.S. GARG, J.)

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